

IN THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

TODD MESSNER,

Petitioner,

vs.

CASE NO.: 23-CA-16988

DIVISION: H

HILLSBOROUGH COUNTY SCHOOL BOARD; and
SUPERINTENDENT VAN AYRES in his capacity as
SUPERINTENDENT for HILLSBOROUGH COUNTY
PUBLIC SCHOOLS,

Respondents.

ORDER DISMISSING PETITIONER'S PETITION FOR WRIT OF MANDAMUS

THIS MATTER is before the Court on Petitioner's December 4, 2023 Petition for Writ of Mandamus (Doc. 6) seeking a writ to compel Respondent to open School Choice for Seminole Heights Elementary School and direct Respondents to comply with Hillsborough County Public School Board (HCP SB) Policies 5120, 5780, and 0130.

Mandamus is the mechanism by which officials can be compelled to perform lawful, ministerial duties. *See Eichelberger v. Brueckheimer*, 613 So. 2d 1372, 1373 (Fla. 2d DCA 1993). "A party petitioning for a writ of mandamus must establish a clear legal right to performance of the act requested, an indisputable legal duty, and no adequate remedy at law." *Radford v. Brock*, 914 So. 2d 1066, 1067 (Fla. 2d DCA 2005) (internal citations omitted). When receiving a petition for a writ of mandamus, the trial court's "initial task is assessing the petition to determine whether it is facially sufficient. If it is not facially sufficient, the court may dismiss the petition." *Id.* Mandamus is available only to "enforce an established legal right ... not to establish that right." *Miami-Dade Cnty. Bd. of Cnty. Comm'rs v. An Accountable Miami-Dade*, 208 So. 3d 724, 731 (Fla. 3d DCA 2016) (internal citations omitted). "A ministerial duty or act is one where there is no room for the exercise of discretion, and the performance being required is directed by law." *Polley v. Gardner*, 98 So. 3d 648, 649 (Fla. 1st DCA 2012) (internal citations omitted).

Petitioner asserts that Respondents have a ministerial duty regarding "controlled open enrollment" which allows students to attend schools outside of the area for which they have been zoned. However, the Petition fails to allege a specific, indisputable legal duty that Respondents have failed or refused to perform. A writ of mandamus is not the proper mechanism to establish a legal right, nor to create a ministerial duty. The Court finds that the Petition and attached appendix are not facially sufficient.

ORDERED AND ADJUDGED that Petitioner's Petition for Writ of Mandamus is hereby DISMISSED without prejudice.

DONE AND ORDERED in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge's signature.

23-CA-016988 12/22/2023 10:05:27 AM

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HELENE L. DANIEL, Circuit Court Judge

Copies to:

Petitioner

Respondent

Additional copy(ies) provided electronically through JAWS